



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

May 22, 2006

Mr. Michael J. Cummings, Chief
Regulatory Branch
U.S. Army Corps of Engineers
Pittsburgh District
2200 William S. Moorhead Federal Building
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

**Re: Final Environmental Impact Statement (FEIS) on Commercial Sand and Gravel
Dredging Operations in the Allegheny and Ohio Rivers, Pennsylvania
CEQ # 20060145**

Dear Mr. Cummings:

In accordance with our responsibilities under Section 309 of the Clean Air Act, Section 102(2)(C) of the National Environmental Policy Act (NEPA) and Section 404 of the Clean Water Act (CWA) the U.S. Environmental Protection Agency (EPA), Region III, has reviewed the above referenced Final Environmental Impact Statement (FEIS) and offers the following comments. The FEIS evaluates the environmental impacts associated with granting and extending federal permits for proposed commercial dredging activities within the Allegheny and Ohio Rivers in the general vicinity of southwestern Pennsylvania. In addition, the permit applications associated with this action are being reviewed by the U.S. Army Corps of Engineers (Corps), Pittsburgh District, and are required under Section 10 of the Rivers and Harbors Act of 1899, and Section 404 of the Clean Water Act. Thus, pertinent comments have also been included in this letter to satisfy EPA's review responsibilities under these statutes as well.

Since our comments on the Draft Environmental Impact Statement (DEIS), the Corps and several resource agencies have met to discuss the concerns of the environmental impacts of the commercial sand and gravel permit renewal. Significant improvements have been made in the approach used to assess and monitor the affects of these mining operations. Most notably using an adaptive management approach has the potential to minimize some of the environmental impacts that have been identified in the EIS. The Corps, the applicants, and the resource agencies should be commended for adopting this approach.

EPA concurs with the Lead Agencies preferred alternative. As stated in the FEIS the preferred alternative, alternative 3, has the potential to reduce the impact to shallow river bottom from 720 acres identified in the previous DEIS to 89 acres of impacts identified for the preferred alternative in the Final EIS. However EPA still has environmental concerns for the impacts caused by this project that are detailed below.



Although adaptive management is not new in concept it may be relatively new in its application to specific projects. As stated in a recent CEQ report, Modernizing NEPA, on the adaptive management approach there are several issues that need to be addressed to assure a successful adaptive management program.

- The ability to establish clear monitoring objectives;
- Agreement on the impact thresholds being monitored;
- the existence of a baseline or the ability to develop a baseline for the resources being monitored;
- The ability to see the effects within an appropriate time frame after the action is taken;
- The technical capabilities of the procedures and equipment used to identify and measure changes in the affected resources and the ability to analyze the changes; and
- The resources needed to perform the monitoring and respond to the results.

EPA recommends that the NEPA Task Force Report to the Council on Environmental Quality Modernizing NEPA, and the specific discussion on Adaptive Management be reviewed. EPA would support this approach if a well defined adaptive management approach was agreed to by all the resource agencies, stakeholders and applicants. EPA would also request to be invited to participate in the development of the adaptive management process. A specific concern that we noted on Page 2-15 in the second paragraph is the notion that for conditions to be acceptable they must balance the overall benefits against reasonably foreseeable detriments, and unless scientifically defensible conditions should be removed. EPA's position is that the existence of restrictions should remain in place until the data is available for the restrictions to be modified. The conditions could be adapted as scientific data is gathered and more importantly if the desired outcome is achieved. EPA is of the viewpoint that it is important to be more protective of human health and the aquatic resources of the Commonwealth until it is proven by the industry that the impacts are indeed minimal. This process should be developed with all the stakeholders prior to the finalization of the permit.

The FEIS should provide more information on the mitigation proposed for the affected environment. As mentioned earlier the FEIS has proposed an alternative that may reduce the potential impacts on the shallow river bottom and mentions that these impacts will be mitigated but no details on the mitigation are provided. EPA recommends that at a minimum a conceptual mitigation plan (CMP) be developed and be agreed upon by the resource agencies prior to the issuance of the permit. The CMP should direct its focus on the intent of the Clean Water Act to improve and/or maintain the biological, chemical, and physical aspects of the waters within the watershed. The Record of Decision or permit conditions should detail or provide the commitment for the required mitigation. EPA also requests to be a participant in the development of the conceptual mitigation plan

The intent of the CWA Section 404 (b)(1) Guidelines is that all practicable alternatives are evaluated and that alternatives which avoid and minimize impacts to the aquatic environment to the maximum extent practicable or would be the least environmentally damaging practicable

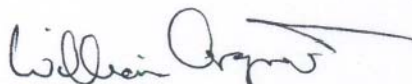
alternative be permitted. The preferred alternative, with the additional restrictions, has the potential to meet the criteria and intent of the Guidelines. Should the Corps include those additional restrictions as outlined in the FEIS, as well as those below, as part of the permit conditions EPA believes that the project impacts would be minimized and avoided sufficiently to meet the criteria of the Guidelines. Specifically, we strongly recommend that as a matter of course and as a part of all the permits the applicants should be required to alter the three-dimensional configuration of dredged areas, unless it is determined to be not practicable at a specific site; that all permits include restricting initial dredging to certain minimum depths; and that all permits require compensatory mitigation and/or restoration measures. In addition to these measures the permit conditions EPA recommends that the following conditions be included in the permit:

- 1) Dredging should not be permitted in an area from 1500 feet upstream to 500 feet downstream and 500 feet laterally of a mussel bed,
- 2) No dredging should be permitted in an area from 2000 feet above and below all legal boundaries of islands. No dredging should be permitted in an island backchannel,
- 3) No dredging should be permitted within 500 feet upstream to 100 feet downstream of the mouths of the embayments and tributary systems or stream mouths at normal pool,
- 4) No in-stream work should be performed during the fish spawning season (April thru June) unless waiver is granted by the Pennsylvania Fish and Boat Commission.

EPA believes that incorporating these conditions into the permit will minimize the impacts to these important aquatic resources. All of these conditions are used in the lower Ohio River within the Huntington District and have demonstrated to be necessary and effective to protect the aquatic resources. The adaptive management process can be used to adjust these baseline conditions while remaining protective.

EPA has environmental concerns regarding the impacts of this project but is hopeful that through the adoption of the adaptive management process, further information on conceptual mitigation, and the recommended permit restrictions stated above, that our concerns would be addressed. We remain committed to working with the Corps and the applicants to develop a formal process for the adaptive management approach described in the FEIS and also to develop the necessary mitigation plan for this project. We would encourage additional discussion between our organizations, and the other resource agencies, to formalize the approaches described in the EIS and to discuss and resolve any other issues raised in this letter. If you have any questions or comments, please contact me at (215) 814-3367, or Ms. Jessica Martinsen at (215) 814-2995.

Sincerely,



William Arguto
NEPA Program Team Leader